

**MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD  
CONTRACT FOR ACTUARIAL SERVICE**

**PARTIES**

This agreement is between the "Actuary",

Milliman  
111 SW Fifth Avenue  
Suite 3700  
Portland, OR 97204-3604  
(Federal Employer ID: 91-0675641)  
(Phone: (503) 227-0634)

and the "Board",

Public Employees' Retirement Board  
100 N. Park Avenue  
Suite 200  
P.O. Box 200131  
Helena, Montana 59620-0131  
(Phone: (406) 444-3154)

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

**SECTION 1 - DATE & TERM**

1.1 The term of this Agreement shall commence July 1, 2005 and it shall terminate June 30, 2007, unless otherwise provided in this instrument.

1.2 This contract and its identical terms may be renewed by the Board for one additional period of two years in duration.

**SECTION 2 - DUTIES OF THE BOARD**

2.1 The Board shall deliver all data and draft financial statements required to perform the valuation on or before August 12 of each year.

2.2 Failure of the Board to meet its duty to deliver acceptable data shall proportionally reduce any penalty to the Actuary as provided in section 6.3.

2.3 The Board shall provide the cooperation and assistance reasonably necessary to ensure that the Actuary can efficiently provide the services required by this Agreement.

### SECTION 3 - DUTIES OF THE ACTUARY

3.1 The Actuary shall deliver to the Board any changes in the data format or information required on or before May 1 of each year.

3.2 Within 5 working days after receipt of the data, the Actuary shall test the data and verify that the medium, format, and accuracy are acceptable and that it is reasonably complete. The Actuary shall immediately notify the Board of all problems.

3.3 The Actuary shall deliver all valuations and reports required in Section 4 to the Board by the date specified or within 45 calendar days of receipt of acceptable data, whichever is later.

3.4 Regarding any services that may be required by this or a separate agreement, the Actuary shall perform no work or render information to any other individual or entity without first securing the written approval of the Board.

### SECTION 4 - SCOPE, DELIVERABLES & COMPENSATION

4.1 Valuation of DB Plans for FY2004 (including plan choice rate sufficiency), including one trip to Helena to explain the valuation - \$52,000

4.2 Valuation of DB Plans for FY2005 (including plan choice rate sufficiency), including one trip to Helena to explain the valuation - \$54,000

4.3 Valuation of Local Police Plans for FY2005 - \$5,000

4.4 Legislative Proposal Valuation for 2005-06 Special Session:

4.4.1 When the proposal only involves funding issues (and does not include member contributions): \$1,500.

4.4.2 When the proposal involves a benefit change (including a member contribution change): \$3,500.

4.5 Legislative Proposal Valuation for 2007 Regular Session:

4.5.1 When the proposal only involves funding issues (and does not include member contributions): \$1,600.

4.5.2 When the proposal involves a benefit change (including a member contribution change): \$3,700.

4.6 Additional trips to Helena (including all time and expenses, including as airfare and hotel) - \$2,500.

4.7 Additional services will be billed at an hourly rate as follows:

Mark O. Johnson - \$350 per hour (increased to \$375 after June 30, 2007)  
 Peter Sturdivan - \$350 per hour  
 Staff Actuaries - \$175 - \$275 per hour  
 Actuarial Analysts - \$125 - \$175 per hour

4.8 The Actuary shall prepare actuarial valuations of the DB Plans for FY2005 and FY2006 to determine the financial position of the funds, normal costs and the accrued unfunded liability based upon present and prospective assets and liabilities of the system. The Actuary shall certify that the valuations and reports are in compliance with the standards established by the American Academy of Actuaries and state whether the system is actuarially sound. The results of the valuation required for financial statement purposes must be delivered to the Board on or before September 15 of each year.

4.9 The Actuary shall keep staff and the Board apprised of current trends and developments within both the retirement industry and the actuarial profession. This includes federal legislation and regulations, and issues regarding financing, benefits, vesting, fiduciary responsibility, disclosures, etc.

4.10 The Actuary shall provide technical assistance in the administration of the system, including consultation on any technical, policy, legal or administrative problems that arise in the course of operation and in preparation of communications to members.

4.11 The Actuary shall produce annual supplemental financial information and reports required by the Governmental Accounting Standards Board. The required reports must be delivered to the Board by September 15 of each year unless other arrangements are made.

4.12 The Actuary shall develop various tables and factors regarding mortality tables, present values, and optional benefit factors needed by the retirement system.

4.13 The Actuary shall perform a study of retired member mortality experience. The review will include the six-year period of July 1999 to June 2005.

4.14 The Actuary shall provide any additional technical services as required by the Board, not included in subsections 4.1 through 4.13. It is anticipated additional services will include: Periodic education meetings with the Board and/or staff members.

4.15 The actuary shall not assign, transfer or subcontract any portion of this contract without the express written consent of the Board. (See 18-4-141, MCA).

## **SECTION 5 – ACCESS AND RETENTION OF RECORDS**

5.1 The actuary agrees to provide the Board, the Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance.

5.2 The actuary agrees to create and retain records supporting the services

rendered (or supplies delivered) for a period of five years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

#### **SECTION 6 - COMPENSATION/PENALTY**

6.1 In consideration for the services to be provided, the Board shall pay according to the following schedule: Actuary may bill for completed projects or on a monthly basis for completed work. If billing is done on a monthly basis, the Board will pay 70% of the amount owing within 45 days of receiving a billing and will pay the balance on project completion.

6.2 The Board may withhold payments to the actuary if the actuary has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the Board caused by the lack of performance.

6.3 The Actuary shall pay, as liquidated damages, \$100 for each calendar day it is delayed in delivering completed valuations or reports from any date specified in this or any separate agreement. The parties agree that this is a reasonable amount of damages, and that it would be impracticable or extremely difficult to fix the actual damage caused by the delay of the Actuary. Payment by the Actuary shall be made by reducing any subsequent installment or lump sum payment. Notwithstanding the foregoing, the Actuary shall not be liable to the Board for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control including, without limitation, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type, acts of God, wars, riots or national or local emergencies.

#### **SECTION 7 - HOLD HARMLESS/INDEMNIFICATION/INSURANCE**

7.1 The actuary agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the actuary's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the actuary and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract, all to the extent of the actuary's negligence.

7.2 The actuary shall maintain for the duration of the contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property including contractual liability that may arise from work performed under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the actuary or its officers, agents, representatives, assigns, or servants.

7.3 The actuary must provide a certificate for Commercial General Liability and Commercial Automobile Liability (Occurrence Coverage), to include bodily injury, personal injury and property damage with combined single limits of \$500,000 per

claim and \$1,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A-. This certificate MUST name the State of Montana as an additional insured party under the actuary's policy including the actuary's general supervision, products, premises and automobiles used.

7.4 A Certificate of Insurance, indicating compliance with the required coverages, will be filed with the Board.

#### **SECTION 8 - COMMUNICATION**

8.1 Either party shall immediately notify the other upon determination that a condition or occurrence has, or is likely to take place, which would or will, affect the relationship or responsibilities of either party to perform its obligations under this Agreement.

8.2 The actuary agrees that all communication concerning this contract or the subject matter of this contract will be exclusively with the Board Liaison identified in Section 15 or the Board Liaison's designee. The actuary agrees that all communication with Board members will be done in an open meeting, unless the Board presiding officer determines otherwise in an open meeting. Communication with Board members or staff concerning other than this contract or the subject matter of this contract must be reported in writing to the Board Liaison identified in Section 15.

#### **SECTION 9 - MODIFICATION & EXTENSION**

This Agreement constitutes the entire agreement between the parties. Any statements, promises or inducements made by either party, which are not contained in this Agreement are neither valid nor binding. This Agreement may only be modified or extended as agreed upon in writing by both parties.

#### **SECTION 10 - OWNERSHIP AND PUBLICATION OF MATERIALS**

10.1 All documents first produced by the Actuary under this Agreement shall be the property of the Board and must meet standards acceptable to or set by the Board.

10.2 The Board shall retain ownership, for all purposes, of the working papers, work products, and end products resulting from partial or full performance under the Agreement. The Actuary shall make all information concerning its activities available to the Board and the Actuary shall not use, publish, or disseminate any information, conclusions or recommendations without the prior written consent of the Board.

10.3 All information transmitted by the Board to the Actuary for any purpose shall remain the property of the Board and the Actuary shall treat such information confidentially.

10.4 The Actuary's work is prepared solely for the use and benefit of the Board in accordance with its statutory and regulatory requirements. The Actuary recognizes that materials it delivers to the Board may be public records subject to disclosure to third

parties; however, the Actuary does not intend to benefit and assumes no duty or liability to any third parties who receive the Actuary's work in this fashion. The Board agrees that any of the Actuary's work made available to third parties will be made available in its entirety.

#### **SECTION 11 - WARRANTY**

The Actuary warrants that the products delivered by this Agreement will be free of defects and will meet the specific requirements of the Board. The Actuary will correct any reasonably noticed defects in the Actuary's work free of charge. This provision shall not apply to defective work attributable to the Board, its personnel or equipment.

#### **SECTION 12 - TERMINATION**

12.1 A non-defaulting party may terminate this Agreement "for cause" without penalty.

12.2 The non-defaulting party shall provide written notice to the defaulting party of its intent to terminate the Agreement. The defaulting party will have 30 days to rectify its breach. Should that party fail to rectify its breach or reasonably satisfy the non-defaulting party, the Agreement shall be terminated.

12.3 In the event of termination by the Board "for cause", no further invoices of the Actuary will be recognized or paid and the Board may seek recovery of any losses suffered or expenditures made by it for personnel, time or materials, due to the Actuary's default.

12.4 In the event of termination by the Actuary "for cause" or by the Board "for convenience", the Board shall pay for all services rendered to date, any reasonable expenses incurred by way of such termination plus a reasonable profit on the unpaid balance of the Actuary's compensation schedule.

12.5 In any event of termination, the Actuary shall immediately return all reports, technical information, files, intermediate materials, supplies, or any other properties of the Board to the Board.

12.6 The Board, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See 18-4-313(3), MCA).

#### **SECTION 13 - CONDITIONS OF DEFAULT**

13.1 The default of a party may occur by, but is not limited to any one of the following circumstances: Failure of a party to timely perform any obligations under this Agreement; A filing, proceeding, finding, or judgment against or by a party under the bankruptcy laws; Any assignment of an interest in this Agreement for the benefit of creditors; The persistent disregard of any law, rule, regulation or policy of the Board to which the Actuary was reasonably informed.

13.2 Neither party shall be responsible for failure to fulfill its obligations due to causes

beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

#### **SECTION 14 - INDEMNIFICATION**

The Actuary is responsible for the fraud, willful or negligent acts of its employees, agents or subcontractors (if any). The Actuary agrees to indemnify and hold harmless the Board, the Montana Public Employee Retirement Administration, the Department of Administration and the State of Montana from any and all claims of injury or damage caused to or suffered by any third party resulting from negligent actions attributable to the Actuary.

#### **SECTION 15 - LIAISON AND SERVICE OF NOTICES**

Written notices or complaints will first be directed to the liaison.

**Actuary Liaison:**

Mark O. Johnson

Milliman

111 SW Fifth Avenue, Suite 2900

Portland, OR 97204-3690

(503) 227-0634

FAX: (503) 227-7956

**Board Liaison:**

Michael O'Connor, Executive Director

Montana Public Employee Retirement Administration

P.O. Box 200131

(100 North Park Avenue, Suite 200)

Helena, MT 59620

(406) 444-5459 or (406) 444-3154

FAX: (406) 444-5428

#### **SECTION 16 - COMPLIANCE WITH LAWS**

16.1 The Actuary represents that its employees, agents and subcontractors (if any) shall comply with all applicable federal and state statutes, regulations, fair labor standards, wage and hour rules and that any employee of any of them shall have appropriate workers' compensation and unemployment insurance coverage.

16.2 The Actuary must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of

1973. In accordance with section 49-3-207, MCA, the Actuary agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

16.3 Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the actuary nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the Board upon expiration. In the event the above certification is not received by November 1, 2005, this contract shall be void.

#### SECTION 17 - TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Actuary must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Actuary for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Actuary for the additional resources the Actuary utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

#### SECTION 18 - MEETINGS

The actuary is required to meet with the Board liaison, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Board liaison. The actuary will be given a minimum of three (3) full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the actuary's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings (two (2) consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.



## SECTION 19 - PROJECT MANAGEMENT AND IMPLEMENTATION

All project management and coordination on behalf of Board shall be through a single point of contact designated as the Board Project Manager. Actuary shall designate an Actuary Project Manager who will provide the single point of contact for management and coordination of actuary's work. All work performed pursuant to this contract shall be coordinated between the Board Project Manager and the Actuary Project Manager.

Michael O'Connor will be the Board Project Manager.

Mark O. Johnson will be the Actuary Project Manager.

The Board Project Manager/Actuary Project Manager may be changed by written notice to the other party.

## SECTION 16 - CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See 18-1-401, MCA).

## SECTION 20 - SEVERABILITY

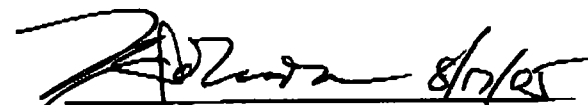
In the event that any term or provision of this Agreement is held to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the terms or provisions held to be invalid. In the event of such an occurrence the parties will, within 30 days, negotiate an acceptable replacement provision.

## SECTION 21 - EXECUTION

The person signing this Agreement on behalf of each party is authorized and empowered to enter into this Agreement and further acknowledges that he or she has read this Agreement, understands it, and agrees to its conditions.

MILLIMAN

Public Employees' Retirement Board

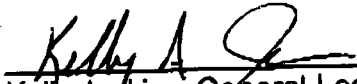
  
Mark O. Johnson  
Principal and Consulting Actuary

  
Carol Carey, President



Mike O'Connor, Executive Director  
Montana Public Employee Retirement  
Administration

Approved for Legal Content:



Kelly Jenkins, General Legal Counsel

**ADDENDUM**  
**CONTRACT FOR ACTUARIAL SERVICES**

**PARTIES**

This agreement is between "Milliman,"

Milliman  
111 SW Fifth Avenue  
Suite 3700  
Portland, OR 97204-3604

and the "Board,"

Public Employees' Retirement Board

**PURPOSE**

The purpose of this addendum is to extend the termination date of the original contract from June 30, 2007, to June 30, 2009. The terms and services of the agreement remain unchanged, other than the following:

**SECTION 4 - SCOPE, DELIVERABLES & COMPENSATION**

- 4.1 Valuation of DB Plans for FY 2007 (including plan choice rate sufficiency and one trip to Helena to explain the valuation) - \$65,000
- 4.2 Valuation of DB Plans for FY 2008 (including plan choice rate sufficiency and one trip to Helena to explain the valuation) - \$65,000
- 4.3 Valuation of Local Police Plans for FY 2007 - \$6,000
- 4.4 Legislative Proposal Valuation for 2009 Regular Session
  - 4.4.1 When the proposal only involves funding issues (and does not include member contributions) - \$1,600 (per system)
  - 4.4.2 When the proposal involves a benefit change (including a member contribution change) - \$3,700 (per system)
- 4.5 Delete
- 4.6 Additional trips to Helena, including up to eight hours of time over up to two days - \$2,500. Additional time at regular billing rate for additional days.
- 4.7 Additional services will be billed at an hourly rate as follows:
  - Mark O. Johnson - \$375
  - Peter Sturdivan - \$375
  - Staff Actuaries - \$175-300
  - Actuarial Analysts - \$125-175

4.8 Change the first sentence to indicate that the Actuary shall prepare actuarial valuations of the DB plans for FY 2007 and FY 2008. The remainder of the paragraph shall remain unchanged.

SECTION 15 – LIASON AND SERVICE OF NOTICES

Board Liaison is now Roxanne Minnehan, Executive Director.

SECTION 19 – PROJECT MANAGEMENT AND IMPLEMENTATION

Roxanne Minnehan will be the Board Project Manager

EXECUTION

The person signing this Agreement on behalf of each party is authorized and empowered to enter into this Agreement and further acknowledges that he or she has read this Agreement, understands it and agrees to its conditions.

MILLIMAN

  
\_\_\_\_\_  
Mark O. Johnson

Date: 6/6/07

PUBLIC EMPLOYEES' RETIREMENT BOARD

  
\_\_\_\_\_  
Elizabeth Nedrow, President

Date: 6/9/07

Approved for Legal Content:

  
\_\_\_\_\_  
Scott A. Miller, Legal Counsel